(134)

HIGH COURT OF JUDICATURE, CHHATTISGARH AT BILASPUR

WRIT PETITION NO.2057 OF 2003

PETITIONERS:

1. M/s. Shri Jagdish Rice & Oil Mills,
A Proprietorship firm through its
Proprietor Shri Gir-raj Mahaver,
Jeyopore Road, Jagdalpur,
Distt. Bastar (C.G.)

2. Gir-raj Mahaver,
S/o Late Khemchand Mahaver,
Aged about 31 years,
Occupation: Business,
R/o Kumarpara, Jeyopore Road,
Jagdalpur, Distt. Bastar (C.G.)

Versus

RESPONDENTS:

1. Central Bank of India
Through its Regional Manager,
Choubey Colony, Raipur,
Distt. Raipur (C.G.)

2. Central Bank of India
Through its Branch Manager,
Jagdalpur Branch, Jagdalpur,
Distt. Bastar (C.G.)

POST FOR ORDER ON 15th SEPTEMBER, 2003

Sd/-
L.C. Bhadoo
Judge

11th September, 2003

(135)

HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

WRIT PETITION NO.2057 OF 2003

PETITIONERS:

1. M/s. Shri Jagdish Rice & Oil Mills,
A Proprietorship firm through its
Proprietor Shri Gir-raj Mahaver,
Jeyopore Road, Jagdalpur,
Distt. Bastar (C.G.)

2. Gir-raj Mahaver,
S/o Late Khemchand Mahaver,
Aged about 31 years,
Occupation: Business,
R/o Kumarpara, Jeyopore Road,
Jagdalpur, Distt. Bastar (C.G.)

Versus

RESPONDENTS:

1. Central Bank of India
Through its Regional Manager,
Choubey Colony, Raipur,
Distt. Raipur (C.G.)

2. Central Bank of India
Through its Branch Manager,
Jagdalpur Branch, Jagdalpur,
Distt. Bastar (C.G.)

Present: -

Shri Kishore Shrivastava with Shri Sanjay Kumar Agrawal, Advocates:	For the petitioners
Shri Prashant Mishra, Advocate:	For the respondents
Shri Kishore Bhaduri, Advocate:	For the Intervener

Before: Hon'ble Shri L.C. Bhadoo, J

O R D E R

(Passed on 15th September, 2003)

1. The petitioners have preferred this petition under Article 226 of the Constitution of India, by which they have challenged the order dated 20th May, 2003, by which respondent No.2, the Manager, Central Bank of India, Branch: Jagdalpur, rejected the application of the petitioners for settlement of term loan account and cash credit account under revised guidelines dated 29.01.2003 for compromise settlement of chronic Non-Performing Assets issued by the Reserve Bank of India.

(136)

2. Facts leading to filing of this writ petition are that the petitioner-firm M/s. Shri Jagdish Rice & Oil Mills is a proprietorship firm and petitioner No.2 is the sole Proprietor of the firm after the death of Khemchand Mahaver, the then Proprietor. On the application of the petitioners, respondent No.2 granted a credit facility of Rs.25,00,000/- and sanctioned the term loan of Rs.10,00,000/- for purchase of land and machinery and in lieu of that the petitioners executed necessary documents in favour of the respondents-Bank. In the year 1999, the petitioner-firm suffered certain proceedings by the State authorities which resulted into the seizure of the mill and ultimately lead to stoppage of the production in the rice mill and thereby, the petitioners failed to make repayment of the loan as per the schedule. In spite of the assurance given by the Proprietor of the firm, the respondents-Bank moved an application under Section 19 of the Debts Recovery Tribunal Act, before the Debts Recovery Tribunal, Jabalpur, which was registered as O.A.No.237/2000 and ultimately the Tribunal passed final order of recovery on 08.01.2001 ordering the recovery of Rs.44,01,196/-. Thereafter, the respondents-Bank moved an execution application before the Debts Recovery Tribunal which has been registered as O.A.No.7/2001. Against that order, a Miscellaneous Appeal was filed before the Debts Recovery Tribunal, but the same was rejected vide order dated 05.09.2001 against which the petitioner filed a writ petition before this Court which was registered as W.P.No.2108/2001 (M/s. Jagdish Rice & Oil Mills vs. Central Bank of India & others), but that writ petition was also dismissed on the ground that it is not maintainable.

3. In the meanwhile, during the year 2003, the Reserve Bank of India (RBI) issued guidelines on 29.01.2003 and circulated the same to the Chairman-cum-Managing Directors of all the public sector banks including the respondents-Bank. The revised guidelines for compromise settlement of chronic Non-Performing Assets (NPAs) of public sector banks provides for coverage in which 4 categories have been mentioned. The revised guidelines will over all NPAs in all sectors irrespective of the nature of business, which have become doubtful or loss as on 31st March, 2000, with outstanding balance of Rs.10.00 crores or less and the scheme was applicable up to 30th April, 2003, and the same has been extended up to 30th September,

2003. The guidelines are Annexure P-3. As per the settlement formula clause (a), the amount which is required to be paid by the defaulter has to be NPA balance if the account has been classified as doubtful or loss as on 31st March, 2000. In the instant case, vide letter dated 1st March, 2003, the certificate holder Bank has already informed that the account of certificate debtor has been categorized as doubtful/loss on 31st March, 2000. In the event if clause (b) has to be applied then what is necessary to see is that the account should be categorized as NPA prior to 31st March, 2000, but if the same has became doubtful or loss after 31st March, 2000, then the defaulter is also required to make payment of existing prime landing rate from 1st April, 2000. As per the scheme, the repayment has been expected in one lump sum and if the defaulter is not in a position to make the lump sum payment then he should deposit 25% of the amount of settlement and the balance amount of 75% in installments within a period of one year. But it is mentioned that it will not be applicable in case of willful default, fraud or malfeasance.

4. After the introduction of the above scheme, respondent No.2-Bank sent a letter dated 28.02.2003 to the petitioner under the RBI guidelines without indicating the amount to be deposited by the petitioner. A copy of the said letter is Annexure P-4. The petitioner vide letter dated 13th March, 2003, submitted 25% of the total outstanding balance as shown on 30th September, 1998, for Rs.33,24,670/- and submitted a TDR for Rs.8,32,000/-. A copy of the same is Annexure P-6. But, surprisingly, the Bank did not took any further step pursuant to the compromise amount and that lead to the auctioning of the petitioner's property by the Recovery Officer appointed by the Debts Recovery Tribunal. On the complaint made by the petitioner to the Reserve Bank of India on 14.03.2003, the RBI informed the petitioner to take benefit of the revised scheme. Vide letter dated 13th March, 2003, the respondents-Bank informed that the amount offered by the petitioner for compromise settlement is not in tune with the RBI revised guidelines and requested to improve the compromise offer. A copy of the said letter is Annexure P-8. It is further stated that the offer made by the petitioner is not in accordance with the revised guidelines. The petitioner verified its amount and on verification it is found that the actual NPA amount under the account comes to Rs.35,19,462/-, 25% of which works

out to Rs.8,79,910/-. Accordingly, by letter dated 05.04.2003, the petitioner again deposited a TDR for Rs.47,911/- in order make exactly 25% of the NPA amount and requested for appropriation of the same towards settlement under the One Time Settlement Scheme (OTS Scheme) of revised guidelines issued by the RBI. But respondent No.2-Bank, in a most casual and illegal manner, by the impugned order dated 25.05.2003 rejected the settlement application of the petitioner.

5. The action of the respondents is contrary to the guidelines dated 29.01.2003 issued by the Reserve Bank of India. Categorizing the petitioner-firm's account as NPA account as on 31st March, 1999, is a fact which is not disputed. The guidelines issued by the RBI are statutory and contravention thereof or any default in compliance therewith is punishable under sub-section (4) of Section 46 of the Banking Regulations Act, 1949. Therefore, the record of respondent No.2 be summoned and the impugned order dated 20.05.2003 be quashed and set aside and respondent No.2 be directed to consider the case of the petitioner-firm in accordance with the revised guidelines.

6. Return has been filed on behalf of the respondents in which it has been mentioned that the recovery proceedings initiated by the Bank against the petitioners before the Debts Recovery Tribunal having been complete on passing of the certificate of recovery and the same having been put to execution, nothing survives in this writ petition and it has become infructuous, therefore it may be dismissed. The credit facility and term loan was sanctioned on 29.11.1997 and the petitioner mortgaged the properties on the same day. The legal notice by the Bank for depositing the outstanding balance was issued on 25.08.1999 and as on 31st May, 2000, the total amount outstanding against the petitioner-firm was Rs.44,01,196/- with further interest @ 16.83% per annum. On 01.06.2000, an application under Section 19 of the Debts Recovery Tribunal Act was filed and the Debts Recovery Tribunal, Jabalpur, proceeded ex-parte and recovery certificate was issued on 08.01.2001 against which the petitioners preferred a miscellaneous appeal which was rejected on 05.09.2001. Therefore, an execution was preferred by the respondents and on 17.07.2001 property auction notice was

ordered by the Debts Recovery Tribunal to be published and on 25.07.2001 the auction notice was published. The writ petition challenging the recovery certificate issued by the Debts Recovery Tribunal was dismissed by this Court on 30.01.2002. On 29.01.2003, the Reserve Bank of India issued fresh guidelines; property of the petitioner was auctioned on 27.03.2003, and the auction purchaser has deposited the amount. In view of the above sequence of events, the petitioner is a willful defaulter; therefore, the instant writ petition is not maintainable.

7. It has further been mentioned that the case of the petitioner is not covered under the guidelines as the recovery certificate was already issued and no case is pending before the Debts Recovery Tribunal. The Reserve Bank of India has also interpreted the guidelines in similar manner which has been informed to the answering respondents by the RBI vide letter dated 16.07.2003. Even otherwise, the petitioner was not willing to improve his offer at the time of negotiation which was held by the Bank tentatively to assess the petitioner's bonafide and desire to settle the account which would have been subject to the higher authorities of the Bank including the Zonal and Head Office and on the basis of correct interpretation and applicability of the revised guidelines dated 29.01.2003 of the RBI. Therefore, the principle of promissory estoppel is not attracted in such cases. Therefore, the petition be dismissed.

8. An intervention application has been filed by Mr. Kishore Bhaduri, Advocate, on behalf of Sushil Chandra Pagaria and it has been mentioned that the property in question has already been auctioned and that has been concluded on 27.03.2003. It is further submitted that the intervener (Sushil Chandra Pagaria) has already deposited Rs.48,33,000/- being the highest bidder and the sale was concluded in favour of the intervener and he was declared as the purchaser. Therefore the petition be dismissed.

9. I heard the learned counsel for the parties.

10. The main argument of the learned counsel for the petitioners is that respondent No.2 rejected the offer of the petitioner in a most arbitrary and unlawful manner. Respondent No.2-Bank himself

requested the petitioners to take the benefit of the RBI guidelines and sent a letter, Annexure P-4. When the petitioner moved for the settlement of the account under NPA scheme issued by the RBI, the respondent No.2-Bank had not replied. The learned counsel further argued that when the case was not settled by respondent No.2-Bank and the RBI vide Annexure P-7 informed the petitioners to take advantage of the revised guidelines issued on 29th January, 2003, vide Annexure P-8, respondent No.2-Bank informed the petitioners that the offer of the petitioners is not in tune with the RBI guidelines and asked the petitioners to improve the compromise offer. Thereafter, the petitioners sent a letter Annexure P-9 and also sent additional amount to make-up 25% of the offer. But, ultimately, in a most arbitrary manner vide letter Annexure P-10, respondent No.2-Bank informed the petitioners that since the petitioner had not agreed for settlement of both the accounts as per the norms of revised RBI guidelines and the petitioner did not offer the compromise amount according to the guidelines of RBI, therefore, his application for compromise settlement is not eligible to be considered under the OTS scheme. The learned counsel further submitted that the said letter rejecting the offer discloses no reasons and the respondents ought to have sent a reasoned letter. He further submitted that the case of respondent No.2 is that the petitioner is a willful defaulter; therefore, he is not entitled for the benefit which is incorrect and the petitioner was never a willful defaulter.

11. On the other hand, the learned counsel for the respondents specifically argued that the case of the petitioner is not covered under the guidelines issued by the Reserve Bank of India because before introduction of the scheme, the matter was already over and no case was pending before the Debts Recovery Tribunal as the Debts Recovery Tribunal already issued the recovery certificate as back as in the year 2001. Moreover, the property has been auctioned, the sale has been confirmed and the auction purchaser Sushil Chandra Pagaria has already deposited the auction amount.

12. In order to appreciate the arguments of the learned counsel for the parties, it will be beneficial to reproduce relevant paras of the Reserve Bank of India scheme dated 29th January, 2003. Clauses

(c) & (d) of Part (A) of the said scheme which envisages the cases which are covered under the guidelines is thus,

> c) "These guidelines will cover cases on which the banks have initiated action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and also cases pending before Courts / DRTs / BIFR, subject to consent decree being obtained from the Courts / DRTs / BIFR."
>
> d) "Cases of willful default, fraud and malfeasance will not be covered."

Therefore, a perusal of clause (c) envisages and includes that only the cases pending before the Courts/DRTs/BIFR are covered under the scheme and other matters which are already decided and decreed are not covered under the scheme. As per this clause, the matters which were already decided and the matters on which the decree had already been passed were not covered under this clause. The petitioner's case is already decided by the Debts Recovery Tribunal and a recovery certificate was already issued by the DRT on 08.01.2001. Therefore, the case of the petitioner-firm is not covered under the guidelines issued by the RBI on 29.01.2003.

13. For this view, I am supported by the order of Andhra Pradesh High Court in the case of **Krupa Alloys and Metals vs. Chief Manager, State Bank of India, Secunderabad and another** reported in **2003 (2) Bank CLR 127 (AP)**, in which it has been held that this scheme applies only to those cases where the cases are pending before the Court. In another case i.e. W.P.No.973 of 2003 **Chemosyn Limited & another vs. Union Bank of India & another** decided on 3rd July, 2003, a Division Bench of the Bombay High Court has held that under the RBI circular dated 29th January, 2003, only the cases which are pending before the Court are covered and the matter in which the cases are already decided by the Court are not covered, because the RBI has made categorical and unambiguous statement in the affidavit that the said circular is not applicable nor does it cover the cases which have already been decided. According to Reserve bank of India, the objective of circular dated 29th January, 2003 was to provide a fast track channel for recovery of NPAs. In the case where decree has already been passed, the banks can straightaway execute the same and recover the dues and therefore,

the said circulated dated 29th January, 2003 does not cover the cases where decrees have already been passed.

14. So, in view of the above two decisions, I am of the opinion that only pending cases are covered under the guidelines dated 29th January, 2003, issued by the Reserve Bank of India and the cases in which the decree has already been passed by the Court are not covered and the same stand was taken by the RBI in the case of **Chemosyn Limited & another *(supra)***. In the present case, through the letter dated 16.07.2003 (Annexure R-1), the RBI has informed the respondent No.1-Bank that the case of the present petitioner is not covered under the RBI scheme.

15. Now, coming to the point raised by the learned counsel for the petitioners that respondent No.2-Bank itself asked the petitioner to take the benefit of RBI guidelines vide Annexure P-4 and in pursuance of that only, the petitioner moved application to avail the benefit of the scheme, therefore, now the Bank cannot take the stand that the case of the petitioner is not covered under the guidelines dated 29.01.2003. But, if we look into Annexure P-4, in the heading itself, it has been mentioned that "*Without Prejudice to the rights of the Bank*" and in the last, a note has been appended that *the decision of the Bank will be final and binding*. It has been mentioned in the return that whatever the intimation sent to the petitioner and the proposal made by the petitioner was not within the power of respondent No.2-Bank itself to decide. If according to respondent No.2-Bank the offer made by the petitioner was in tune with the scheme, even then that was required to be approved and subject to the decision of higher authorities of the Bank including the Zonal and Head Office and on the basis of the correct interpretation and applicability of guidelines issued by the RBI. In view of letter Annexure P-4 intimating the petitioners to take advantage of the scheme does not stop the Bank from raising the point that the case of the petitioner is not covered under the RBI guidelines because against the statutory rules the principles of promissory estoppel does not apply and the guidelines issued by the RBI is statutory in its form because the RBI issued the guidelines under sub-section (4) of Section 46 of the Banking Regulations Act, 1949.

143

16. As far as the question of willful default is concerned, it is true that the case of the petitioner does not fall under the willful default for the reason that in para-9 of the return the dates of various events have been mentioned which itself reveals that the petitioner was not in a position to make the payment and willful default comes into play only when the party is in position to pay the amount, but the party has defaulted deliberately in spite of that fact that the party was in a position to make the payment. As has been interpreted by the Hon'ble Apex Court in the case of **P.M. Punnoose vs. K.M. Munneruddin & others** reported in **JT 2003 (7) SC 105**,

> "willful default means a deliberate and intentional default knowing full well the legal consequences thereof. The use of the words 'willful default' in the provision is suggestive of the legislative intent that default, in order to be willful, must be intentional, deliberate, calculated and conscious with full knowledge of legal consequence flowing therefrom."

So, the present case is not a case of willful default. Since the case of the petitioner is not covered by the guidelines issued by the Reserve Bank of India, there is no need to enter into further arguments of the learned counsel for the petitioners.

17. In the result, the writ petition of the petitioners has no merit and the same is liable to be dismissed. Accordingly, the writ petition is dismissed.

Sd/-
L.C. Bhadoo
Judge

Soma